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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742, 750 and 774

[Docket No. 160204079-6079-01]

RIN 0694-AG77

Revisions to the Export Administration Regulations Based on the 2015 Missile Technology Control Regime Plenary Agreements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to reflect changes to the Missile Technology Control Regime (MTCR) Annex that were agreed to by MTCR member countries at the October 2015 Plenary in

Rotterdam, Netherlands, and the April 2015 Technical Experts Meeting (TEM) in Bern, Switzerland. This final rule makes conforming changes to correlate the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) and other EAR provisions with the current MTCR Annex. This final rule revises six Export Control Classification Numbers (ECCNs) to implement the changes that were agreed to at the meetings and to better align the MT controls on the CCL with the MTCR Annex. In addition, this final rule makes a change to MT licensing policy to be consistent with the MTCR Annex *General Minimum Software Note* and the MTCR Annex *General Technology Note* that specify that a license for MT controlled items should also authorize certain minimum “software” and “technology.” This final rule also adds a new paragraph to the section of the EAR that specifies which changes to a license are considered “non-material.” This amendment will facilitate this rule’s revised MT licensing policy, which will apply to all licenses for MT controlled items, except when excluded by a license condition.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Sharon Bragonje, Nuclear and Missile Technology Controls Division, Bureau of Industry and Security, Phone: (202) 482–0434; E-mail: sharon.bragonje@bis.doc.gov

SUPPLEMENTARY INFORMATION:

Background

The Missile Technology Control Regime (MTCR) is an export control arrangement among 34 nations, including most of the world's suppliers of advanced missiles and missile-related equipment, materials, software and technology. The regime establishes a common list of controlled items (the Annex) and a common export control policy (the Guidelines) that member countries implement in accordance with their national export controls. The MTCR seeks to limit the risk of proliferation of weapons of mass destruction by controlling exports of goods and technologies that could make a contribution to delivery systems (other than manned aircraft) for such weapons.

In 1993, the MTCR's original focus on missiles for nuclear weapons delivery was expanded to include the proliferation of missiles for the delivery of all types of weapons of mass destruction (WMD), i.e., nuclear, chemical and biological weapons. Such proliferation has been identified as a threat to international peace and security. One way to address this threat is to maintain vigilance over the transfer of missile equipment, material, and related technologies usable for systems capable of delivering WMD. MTCR members voluntarily pledge to adopt the Regime's export Guidelines and to restrict the export of items contained in the Regime's Annex. The Regime's Guidelines are implemented through the national export control laws, regulations and policies of the regime members.

Amendments to the Export Administration Regulations

This final rule revises the Export Administration Regulations (EAR) to reflect changes to the MTCR Annex agreed to at the October 2015 Plenary in Rotterdam, Netherlands, and changes resulting from the April 2015 Technical Experts Meeting (TEM) in Bern, Switzerland. Corresponding MTCR Annex references are provided below for the MTCR Annex changes

agreed to at the meetings. This rule also makes two conforming changes to correlate the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) and other EAR provisions with the current MTCR Annex. These conforming changes are made to better align the MT controls on the CCL and other parts of the EAR with the MTCR Annex. In the explanation below for the revisions made in this rule, BIS identifies these changes as follows: “Rotterdam 2015 Plenary,” “Bern 2015 TEM,” and “Conforming Change to MTCR Annex” to assist the public in understanding the origin of each change included in this final rule.

In § 742.5 (Missile technology), this final rule adds a new paragraph (b)(3), and redesignates paragraphs (b)(3) and (b)(4), as paragraphs (b)(4) and (b)(5). This paragraph specifies that BIS licenses for MT controlled items also authorize the minimum “software” and “technology” for MT controlled items authorized under the same license, unless such minimum “software” and “technology” are specifically excluded by BIS on the license. This final rule also amends § 750.7(c)(1), which identifies “non-material changes [to a license that] do not require submission of a ‘Replacement’ license or any other notification to BIS.” BIS has determined that a license applicant who does not seek a license for minimum “software” or “technology” for an MT controlled item need not seek a “Replacement” license if the applicant subsequently wishes to export such software or technology under the authority of the previously issued license. Such a use of the license would amount to a non-material change because the basic purpose of the license would be substantially undermined if the exporter could not promptly provide minimum necessary software or technology for the previously licensed MT item, an outcome that would be especially problematic in view of the 2015 regime changes referred to above. Moreover, in many instances, such exports of minimum necessary software and

technology may already be made pursuant to License Exception TSU, set forth at § 740.13 (a) and (c) (referring to minimum necessary operation software and technology), and notwithstanding the general prohibition against the use of License Exceptions for MT controlled items in § 740.2(a)(5)(i), which excludes a substantial number of MT items from the general prohibition under specified circumstances. Because BIS has previously determined that many such exports can be made pursuant to a License Exception, it stands to reason that the substantially similar MT “minimum necessary” software and technology exports at issue in this rule should be eligible for “non-material” treatment under § 750.7(c)(1). Accordingly, in this rule BIS establishes a new paragraph (c)(1)(x) to § 750.7 that applies to all MT licenses, except when a condition is placed on the license that excludes such minimum “software” and “technology.” These changes are also consistent with the boilerplate text on BIS licenses, because the § 750.7(c)(1)(x) revision identifies the export, reexport or transfer (in-country) of minimum necessary MT controlled software and technology as a non-material change to a license.

BIS makes this change to MT licensing policy to be consistent with the MTCR Annex *General Minimum Software Note* and the MTCR Annex *General Technology Note* that specify that a license for MT controlled items should also authorize certain minimum “software” and “technology,” which is being implemented by adding paragraph (c)(1)(x) to § 750.7 (which allows licensees to make such exports, reexports and transfers (in-country) pursuant to licenses for MT items) and paragraph (b)(3) to § 742.5 (which specifies this MT licensing policy) of the EAR. (MTCR Annex Change, *General Minimum Software Note*, Rotterdam 2015 Plenary; and MTCR Annex, *General Technology Note*, Conforming Change to MTCR Annex). The MTCR *General Minimum Software Note*, MTCR Annex *General Technology Note*, and the provisions

this final rule adds to § 742.5 are consistent with the General Software Note and General Technology Note in Supplement No. 2 to part 774 and License Exception TSU under § 740.13, paragraphs (a) and (c). Note, however, that the implementation of these provisions is being done through the MT licensing policy, and the addition of paragraph (c)(1)(x) to § 750.7 described below, instead of through the use of a license exception.

BIS is presumptively including such minimum “software” and “technology” as part of the authorized scope for each license that includes MT controlled items. Therefore, applicants are not required to identify or provide any support documentation for such minimum “software” and “technology” on a license application for MT controlled items because such minimum “software” and “technology” is authorized within the scope of the license, pursuant to § 750.7(c)(1)(x), absent a license condition to the contrary. Applicants will be informed when such minimum “software” and/or “technology” in § 750.7(c)(1)(x) is excluded from the license by a BIS condition on the license, which will state the following: “This license does not authorize the export, reexport or transfer (in-country) of the minimum “software” and/or “technology” specified in paragraph (b)(3) of § 742.5.” Absent this condition on the license for MT controlled items, the licensee may assume, consistent with § 750.7(c)(1)(x) and the licensing policy in § 742.5, that the approved license also authorizes the export (or reexport, or transfer (in-country) as applicable) to the same ultimate consignee(s) and end user(s) specified on the license of the minimum “software,” excluding source code, controlled for MT reasons that is required for the installation, operation, maintenance or repair of the item and the “technology” required for the installation, operation, maintenance, or repair of the item in order to ensure the item’s safe operation as originally intended. It is important to note that this licensing policy in paragraph (b)(3) of § 742.5 is only available for licensed exports (or reexports, or transfers (in-

country)). For example, if an exporter wishes to export such minimum “software” and “technology” for a machine tool controlled for MT reasons, but there is not a license in place authorizing the export of the machine tool, then the export of such minimum “software” and “technology” would require a separate authorization under the EAR. This final rule adds a new Note to paragraph (b)(3), as described below, to make this clear.

This final rule also specifies in § 742.5, paragraph (b)(3) that a license for MT controlled items authorizes pursuant to § 750.7(c)(1)(x) the later export (or reexport, or transfer (in-country) as applicable) of “software” controlled for MT reasons intended to correct defects (bug fixes) in a previously legally exported item under a BIS license to the same ultimate consignee(s) and end user(s) specified on the license, provided that the capability and/or performance of the item are not otherwise enhanced and such “software” is not excluded from the license by a BIS condition on the license.

Lastly, for the changes to § 742.5, this final rule adds a Note to paragraph (b)(3) to clarify that for the limited number of ECCNs that are identified in § 740.2, paragraph (a)(5), License Exception TSU is available, and therefore exporters do not need to apply for a license from BIS for such minimum “software” or “technology.” License Exception TSU is available provided such minimum “software” or “technology” is for an end use specified in that paragraph and meets the requirements of License Exception TSU and is not otherwise restricted under § 740.2 of the EAR. This Note to paragraph (b)(3) also clarifies that the licensing policy in paragraph (b)(3) is only available for licensed exports (or reexports, or transfers (in-country)), as noted above in the example for what minimum “software” and “technology” would require a separate authorization under the EAR. BIS took into account that certain minimum “software” and “technology” was already eligible for License Exception TSU when deciding to add paragraph

(b)(3) to § 742.5 for the MT licensing policy and paragraph (c)(1)(x) to § 750.7 to allow for such changes to a license for MT items.

In § 750.7(c) (Changes to the license), this rule adds a new paragraph (c)(1)(x), as referenced above in the description of the changes this final rule makes to § 742.5. This paragraph (c)(1)(x) specifies that the export, reexport or transfer (in-country) of missile technology (MT) controlled minimum “software” and/or “technology” permitted pursuant to the missile technology licensing policy in § 742.5(b)(3) does not require a new license. This final rule also includes a parenthetical phrase in § 750.7(c)(1)(x) to cross reference § 742.5(b)(3)(i) to define the scope of eligible minimum “software” and “technology” and other limitations for licenses for MT controlled items.

Also in § 750.7, this final rule adds two notes to paragraph (c)(1)(x). The new Note 1 provides context for why BIS is implementing the MT licensing policy pursuant to § 750.7(c)(1)(x). Note 1 explains that the MT licensing policy is being implemented pursuant to paragraph (c)(1)(x) because it applies to all MT licenses. This new Note 1 also explains that this MT licensing policy does not apply when BIS places a condition on the specific license(s) which excludes the use of paragraph (c)(1)(x). This final rule also adds a Note 2 to paragraph (c)(1)(x) to provide guidance on the relationship between License Exception TSU and § 750.7(c)(1)(x), as well as § 742.5(b)(3). Note 2 is the same as the Note to paragraph (b)(3) to § 742.5, described above in this final rule, except for minor changes to reflect that the note is in § 750.7.

In addition, this final rule amends the Commerce Control List (CCL) to reflect changes to the MTCR Annex. Specifically, the following six ECCNs are affected by the changes set forth in this final rule:

ECCN 1B101. This final rule amends ECCN 1B101 by revising paragraph a and the introductory text of paragraph b in the List of Items Controlled section. (MTCR Annex Change, Category II: Item 6.B.1.a. and b., Bern 2015 TEM). Specifically, this final rule amends paragraph a to revise the term ‘fiber-placement machines’ to add the term “/tow” after the term “fiber” to clarify that the scope of the control parameter extends to placement machines regardless of whether they are named fiber-placement machines or tow-placement machines. This final rule revises the term “fiber-placement machines” to “fiber/tow-placement machines” in order to clarify that both these similar machines (two types of placement machines) are classified under this control parameter, regardless of the naming convention. This final rule revises paragraph b to add single quotation marks around the term ‘tape-laying machines’ to indicate that this term is defined for purposes of ECCN 1B101. This final rule also revises paragraph b to remove the phrase “and sheets,” because it is no longer needed as part of the control parameter because the definition of tape now encompasses sheets. Lastly, this final rule adds four new Technical Notes to paragraphs a and b. The addition of these four Technical Notes provides a clear technical definition for ‘fiber/tow-placement machines’ and ‘tape-laying machines’ under new Technical Note 1, which is based on the minimum width of material that these machines are capable of laying (as specified further in the new Technical Notes 3 and 4 this final rule adds to ECCN 1B101). This final rule also adds a Technical Note 2 to provide an ECCN-specific definition of ‘filament band,’ which is also used as part of the definition of

‘fiber/tow-placement machines’ and ‘tape-laying machines.’ The purpose of this change to ECCN 1B101 is to more clearly define and differentiate between fiber/tow-placement machines and tape-laying machines. The only increase in license applications will be due to the clarification that tow-placement machines are definitively controlled by the MTCR.

ECCN 1C111. This final rule amends ECCN 1C111 by revising paragraphs b.4, b.9, d.9, and d.12 in the List of Items Controlled section to add CAS (Chemical Abstract Service) Numbers. CAS Numbers are numerical identifiers assigned by the Chemical Abstracts Service (CAS) to every chemical substance described in open scientific literature, including organic and inorganic compounds, minerals, isotopes and alloys. The inclusion of CAS Numbers will make it easier to identify the materials controlled under these “items” paragraphs of 1C111.

This final rule revises paragraph b.4 to add the CAS Number (CAS 25265-19-4 / CAS 68891-50-9) after the material “polybutadiene acrylic acid acrylonitrile (PBAN).” (MTCR Annex Change, Category II: Item 4.C.5.e., Rotterdam 2015 Plenary). This change is not expected to have any impact on the number of license applications received by BIS. This final rule revises paragraph d.9 to add the CAS Number (CAS 6068-98-0) after the material “ethylene dihydrazine.” (MTCR Annex Change, Category II: Item 4.C.2.b.8., Rotterdam 2015 Plenary). This change is not expected to have any impact on the number of license applications received by BIS.

This final rule revises paragraph d.12 to add the material “1,1-Dimethylhydrazinium azide (CAS 227955-52-4),” which is an alternative structure of the same chemical (Dimethylhydrazinium azide) classified under d.12. This final rule also revises paragraph d.12 to add “1,2-” before the material “Dimethylhydrazinium azide” and adds the CAS Number (CAS

299177-50-7) after the material “1,2-Dimethylhydrazinium azide.” These changes will aid exporters and licensing officers by making it clear that both structures of the chemical are caught under paragraph d.12. (MTCR Annex Change, Category II: Item 4.C.2.b.12., Rotterdam 2015 Plenary). These changes are not expected to have any impact on the number of license applications received by BIS.

Lastly, for the changes to ECCN 1C111, this final rule revises paragraph d.19, to add the material “1,1-Diethylhydrazine nitrate (DEHN),” which is an alternative structure of the same chemical (Diethylhydrazine nitrate (DEHN)) classified under d.19. This final rule also revises paragraph d.19 to add “1,2-” before the material “Diethylhydrazine nitrate (DEHN)” and adds the CAS Number (CAS 363453-17-2) after the material “1,2-Dimethylhydrazinium nitrate.” These changes will aid exporters and licensing officers and make clear that both structures of the chemical are caught under paragraph d.19. (MTCR Annex Change, Category II: Item 4.C.2.b.19., Rotterdam 2015 Plenary). These changes are not expected to have any impact on the number of license applications received by BIS.

ECCN 7A116. This final rule amends ECCN 7A116 to revise the heading to add the term “pneumatic” to the beginning of the control parameter to specify that pneumatic flight control systems are also controlled under ECCN 7A116. In addition, this final rule adds the phrase “and fly-by-light” to the parenthetical phrase “(including fly-by-wire systems)” to specify that the flight control systems classified under this ECCN include fly-by-wire and fly-by-light systems. (MTCR Annex Change, Category II: Item 10.A.1., Rotterdam 2015 Plenary). These changes are not expected to have any impact on the number of license applications received by BIS, because the commodities described in ECCN 7A116 are “subject to the ITAR.”

ECCN 9A012. This final rule amends ECCN 9A012 by adding paragraph b.5 in the List of Items Controlled section to control pneumatic, hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire and fly-by-light systems) and attitude control equipment designed or modified for UAVs or drones controlled by ECCN 9A012, and capable of delivering at least 500 kilograms payload to a range of at least 300 km. (MTCR Annex Change, Category II: Item 10.A.1., Rotterdam 2015 Plenary). New paragraph b.5 is not intended to control UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a. This change is made to conform to the MTCR Annex and to address that certain MTCR Category I UAVs are on the CCL as a result of Export Control Reform.

This final rule also makes two conforming changes to ECCN 9A012 for the addition of paragraph 9A012.b.5. Specifically, this final rule is revising the “MT” paragraph in the License Requirements section to add an MT control for the new paragraph 9A012.b.5. This final rule is revising the Related Control Paragraph to include a reference to also see ECCN 9A610, because as noted above, similar types of systems and equipment are controlled under ECCN 9A610.w. This change is expected to result in an increase of 1-3 applications received annually by BIS.

ECCN 9A610. This final rule amends ECCN 9A610 by revising paragraph w in the List of Items Controlled section to add the term “pneumatic” to the beginning of the control parameter to specify that pneumatic flight control systems are also classified under this paragraph w. In addition, this final rule adds the phrase “and fly-by-light” to the parenthetical phrase “(including fly-by-wire systems)” to specify that the flight control systems classified under this paragraph w include fly-by-wire and fly-by-light systems. (MTCR Annex Change,

Category II: Item 10.A.1., Rotterdam 2015 Plenary). These changes are a slight expansion of the control parameter by extending the control to include pneumatic flight control systems that are designed or modified for “missiles.” This expansion of the control parameter is needed because state-of-the-art flight control systems may use optical fibers to provide digital communication between the flight control components. This change is expected to result in an increase of 1-3 applications received annually by BIS.

ECCN 9B106. This final rule amends ECCN 9B106 by revising paragraphs a.1 and the introductory text of paragraph a.2 in the List of Items Controlled section. The introductory text of paragraph a previously referred to both paragraphs a.1 and a.2 as flight conditions, which was not entirely accurate. Therefore, this final rule revises the introductory text of paragraph a by removing the phrase “simulating all of the following flight conditions” and adding in its place the phrase “having all of the following characteristics.” (MTCR Annex Change, Category II: Item 15.B.4.a., Bern 2015 TEM). The altitude and temperature requirements specified in paragraphs a.1.a and a.2.a are flight conditions, but the incorporation or ability to incorporate a shaker unit or other vibration test equipment specified in paragraph a.2 is not strictly a flight condition, but a means of simulating a flight condition, so the introductory text of paragraph a needed to be updated for clarity. This clarification to the introductory text of paragraph a reflects the way this control has previously been interpreted by BIS. This final rule revises the control parameter in paragraph a.1.b to clarify the temperature range goes from below -50° C to above 125° C. The revision to paragraph a.1.b does not change the scope of control of 9B610 and this revision will better reflect the control text of the MTCR Annex. (MTCR Annex Change, Category II: Item 15.B.4.a.1.b., Conforming Change to MTCR Annex).

Lastly, as a non-substantive formatting change, this final rule revises paragraph a.2 to move the comma inside of the single quotation marks for the term ‘bare table.’ These changes are not expected to have any impact on the number of license applications received by BIS.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or enroute aboard a carrier to a port of export or reexport, on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Any such items not actually exported or reexported before midnight, on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], require a license in accordance with this rule.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015), has continued the Export Administration Regulations in effect under the International Emergency Economic

Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Regulatory Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866.
2. Notwithstanding any other provision of law, no person may be required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are expected to increase slightly as a result of this rule. The expected increase in total burden hours is expected to be minimal and to not exceed the existing estimates

for burden hours associated with the PRA and OMB control number 0694–0088. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to Jasmeet_K_Seehra@omb.eop.gov, or by fax to (202) 395-7285.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Immediate implementation of these amendments fulfills the United States' international commitments to the MTCR. The MTCR contributes to international peace and security by promoting greater responsibility in transfers of missile technology items that could make a contribution to delivery systems (other than manned aircraft) for weapons of mass destruction. The MTCR consists of 34 member countries that act on a consensus basis and the changes set forth in this rule implement agreements reached by MTCR member countries at the October 2015 Plenary in Rotterdam, Netherlands and pursuant to the April 2015 Technical Experts Meeting in Bern, Switzerland. Since the United States is a significant exporter of the items in this rule, implementation of this provision is necessary for the MTCR to achieve its purpose. Moreover, it is in the public interest to waive the notice and comment requirements, as any delay in implementing this rule will disrupt the movement of affected items globally because of disharmony between export control measures implemented by MTCR members. Export

controls work best when all countries implement the same export controls in a timely manner. If this rulemaking were delayed to allow for notice and comment and a 30 day delay in effectiveness, it would prevent the United States from fulfilling its commitment to the MTCR in a timely manner, would injure the credibility of the United States in this and other multilateral regimes, and may impair the international communities' ability to effectively control the export of certain potentially national- and international-security-threatening materials.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form.

List of Subjects

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 750

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 742, 750 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 742—[AMENDED]

1. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003-23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015).

2. Section 742.5 is amended:

a. By redesignating paragraphs (b)(3) and (4) as paragraphs (b)(4) and (5), respectively;
and

b. By adding a new paragraph (b)(3) to read as follows:

§ 742.5 Missile technology.

(b) ***

(3)(i) Consistent with the MTCR Annex *General Minimum Software Note*, MTCR Annex *General Technology Note* and § 750.7(c)(1)(x) of the EAR, the approval of any item controlled for MT reasons on a BIS license also authorizes the export, reexport, or transfer (in-country) to the same ultimate consignee(s) and end user(s) specified on the license of the minimum “software,” excluding source code, controlled for MT reasons that is required for the installation, operation, maintenance or repair of the item and the “technology” required for the installation, operation, maintenance, or repair of the item in order to ensure the item’s safe operation as originally intended. The approval of any item controlled for MT reasons on a BIS license also authorizes the later export, reexport, or transfer (in-country) of “software” controlled for MT reasons intended to correct defects (bug fixes) in a previously legally exported item under a BIS license to the same ultimate consignee(s) and end user(s) specified on the license, provided that the capability and/or performance of the item are not otherwise enhanced. This MT licensing policy is implemented concurrent with § 750.7(c)(1)(x) because it applies to all MT licenses, except when a condition is placed on the license which excludes the use of § 750.7(c)(1)(x), as described in paragraph (b)(3)(ii) of this section.

(ii) Applicants are not required to identify or provide any support documentation for such minimum “software” or “technology” on a license application for MT controlled items because such minimum “software” or “technology” is authorized within the scope of the license, consistent with § 750.7(c)(1)(x). Applicants will be informed when such minimum “software” and/or “technology” in § 750.7(c)(1)(x) is excluded from the license by a BIS condition on the license, which will state the following: “This license does not authorize the export, reexport or transfer (in-country) of the minimum “software” and/or “technology” specified in paragraph (c)(1)(x) of § 750.7 (See paragraph (b)(3) of § 742.5).”

***Note to paragraph (b)(3):** License Exception TSU under § 740.13 of the EAR is available for the ECCNs controlled for MT reasons specified in paragraph (a)(5) in § 740.2, provided the software or technology is for an end use specified in that paragraph and meets the requirements of License Exception TSU. (See §§ 740.2(a)(5) and 740.13). The licensing policy in paragraph (b)(3) is only available for licensed exports (or reexports, or transfers (in-country)).*

PART 750 – [AMENDED]

3. The authority citation for 15 CFR part 750 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec 1503, Pub. L. 108-11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223; Presidential Determination 2003-23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

4. Section 750.7 is amended:

- a. By removing the period at the end of paragraph (c)(1)(ix) and adding in its place “; or”;
and
- b. By adding paragraph (c)(1)(x) to read as follows:

§ 750.7 Issuance of licenses.

(c) ***

(1) ***

(x) Export, reexport or transfer (in-country) of missile technology (MT) controlled minimum necessary “software” and/or “technology” permitted pursuant to the missile technology licensing policy in § 742.5(b)(3) of the EAR. (See § 742.5(b)(3)(i) for the scope of eligible minimum “software” and/or “technology” and other limitations for licenses for MT controlled items).

***Note 1 to paragraph (c)(1)(x):** This MT licensing policy is implemented pursuant to paragraph (c)(1)(x) of this section because it applies to all MT licenses, except when a condition is placed on the license which excludes the use of paragraph (c)(1)(x) of this section, as described in § 742.5(b)(3)(ii).*

***Note 2 to paragraph (c)(1)(x):** License Exception TSU under § 740.13 of the EAR is available for the ECCNs controlled for MT reasons specified in paragraph (a)(5) in § 740.2, provided the software or technology is for an end use specified in that paragraph and meets the requirements of License Exception TSU. (See §§ 740.2(a)(5) and 740.13). The licensing policy in § 742.5(b)(3) is only available for licensed exports (or reexports, or transfers (in-country)).*

PART 774—[AMENDED]

5. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 – Special Materials and Related Equipment, Chemicals, “Microorganisms” and “Toxins,” Export Control Classification Number (ECCN) 1B101 is amended:

- a. By revising “items” paragraphs a and b in the List of Items Controlled section; and
- b. By adding Technical Notes for paragraphs a and b at the end of the “items” paragraph b in the List of Items Controlled section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

1B101 Equipment, other than that controlled by 1B001, for the “production” of structural composites, fibers, prepregs or preforms, usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a “range” equal to or greater than 300 km and their subsystems, as follows (see List of Items Controlled); and “specially designed” “parts,” “components” and “accessories” therefor.

List of Items Controlled

Items:

- a. Filament winding machines or ‘fiber/tow-placement machines,’ of which the motions for positioning, wrapping and winding fibers can be coordinated and programmed in three or more axes, designed to fabricate composite structures or laminates from fibrous or filamentary materials, and coordinating and programming controls;
- b. ‘Tape-laying machines’ of which the motions for positioning and laying tape can be coordinated and programmed in two or more axes, designed for the manufacture of composite airframe and missile structures;

Technical Notes for paragraphs a and b: *For the purposes of 1B101.a. and 1B101.b., the following definitions apply:*

1. ‘Fiber/tow-placement machines’ and ‘tape-laying machines’ are machines that perform similar processes that use computer-guided heads to lay one or several ‘filament bands’ onto a mold to create a part or a structure. These machines have the ability to cut and restart individual ‘filament band’ courses during the laying process.

2. A ‘filament band’ is a single continuous width of fully or partially resin-impregnated tape, tow, or fiber. Fully or partially resin-impregnated ‘filament bands’ include those coated with dry powder that tacks upon heating.

3. *‘Fiber/tow-placement machines’ have the ability to place one or more ‘filament bands’ having widths less than or equal to 25.4 mm. This refers to the minimum width of material the machine can place, regardless of the upper capability of the machine.*

4. *‘Tape-laying machines’ have the ability to place one or more ‘filament bands’ having widths less than or equal to 304.8 mm, but cannot place ‘filament bands’ with a width equal to or less than 25.4 mm. This refers to the minimum width of material the machine can place, regardless of the upper capability of the machine.*

7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 – Special Materials and Related Equipment, Chemicals, “Microorganisms” and “Toxins,” Export Control Classification Number (ECCN) 1C111 is amended:

- a. By revising “items” paragraph b.4 in the List of Items Controlled section; and
- b. By revising “items” paragraphs d.9, d.12 and d.19 in the List of Items Controlled section to read as follows:

1C111 Propellants and constituent chemicals for propellants, other than those specified in 1C011, as follows (see List of Items Controlled).

List of Items Controlled

Items:

b. ***

b.4. Polybutadiene acrylic acid acrylonitrile (PBAN) (CAS 25265-19-4 / CAS 68891-50-9);

d. ***

d.9. Ethylene dihydrazine (CAS 6068-98-0);

d.12. 1,1-Dimethylhydrazinium azide (CAS 227955-52-4) / 1,2-Dimethylhydrazinium azide (CAS 299177-50-7);

d.19. 1,1-Diethylhydrazine nitrate (DEHN) / 1,2-Diethylhydrazine nitrate (DEHN) (CAS 363453-17-2);

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A116 is amended by revising the heading to read as follows:

7A116 Flight control systems (pneumatic, hydraulic, mechanical, electro-optical, or electro-mechanical flight control systems (including fly-by-wire and fly-by-light systems) and attitude control equipment) designed or modified for “missiles”. (These items are “subject to the ITAR”. See 22 CFR parts 120 through 130.)

9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A012 is amended:

- a. By revising the “MT” paragraph in the table in the License Requirements section;
- b. By revising the Related Controls paragraph in the List of Items Controlled section; and
- c. By adding “items” paragraph b.5 in the List of Items Controlled section to read as follows:

9A012 Non-military “Unmanned Aerial Vehicles,” (“UAVs”), unmanned “airships”, related equipment and “components”, as follows (see List of Items Controlled).

License Requirements

Reason for Control: *****

<i>Control(s)</i>	<i>Country Chart (see sup No. 1 to part 738)</i>

MT applies to non-military Unmanned Air Vehicle (UAVs) and Remotely Piloted Vehicles (RPVs) that are capable of a maximum range of at least 300 kilometers (km), regardless of payload, and 9A012.b.5.	MT Column 1

List of Items Controlled

Related Controls: See the U.S. Munitions List Category VIII (22 CFR Part 121). Also see ECCN 9A610 and § 744.3 of the EAR.

Items:

b. ***

b.5. Pneumatic, hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire and fly-by-light systems) and attitude control equipment designed or modified for UAVs or drones controlled by ECCN 9A012., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A610 is amended by revising “items” paragraph w in the List of Items Controlled section to read as follows:

9A610 Military aircraft and related commodities, other than those enumerated in 9A991.a (see List of Items Controlled).

List of Items Controlled

Items:

w. Pneumatic, hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire and fly-by-light systems) and attitude control equipment designed

or modified for UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—
Aerospace and Propulsion, Export Control Classification Number (ECCN) 9B106 is amended:

a. By revising the introductory text of “items” paragraph a in the List of Items Controlled section;

b. By revising “items” paragraph a.1 in the List of Items Controlled section; and

c. By revising the introductory text of items paragraph a.2 to read as follows:

9B106 Environmental chambers usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a “range” equal to or greater than 300 km and their subsystems, as follows (see List of Items Controlled).

List of Items Controlled

Items:

a. Environmental chambers having all of the following characteristics:

a.1. Capable of simulating any of the following flight conditions:

a.1.a. Altitude equal to or greater than 15,000 m; or

a.1.b. Temperature range from below -50° C to above 125° C; and

a.2. Incorporating, or designed or modified to incorporate, a shaker unit or other vibration test equipment to produce vibration environments equal to or greater than 10 g rms, measured 'bare table,' between 20 Hz and 2 kHz while imparting forces equal to or greater than 5 kN;

Dated: March 29, 2016

Kevin J. Wolf

Assistant Secretary

for Export Administration

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